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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 534

SAM ORLANDO,
Petitioner,

vs.

THE STATE OF ILLINOIS,
Respondent.

PETITION FOR REHEARING

WM. SCOTT STEWART,
Counsel for Petitioner.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

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MAY IT PLEASE THE COURT:

Your Honors have refused to take jurisdiction of this case, in which we seek a review of a State judgment of conviction. In our prayer for reconsideration we wish to emphasize a few points which may have escaped your Honors.

Petitioner is a precinct captain convicted of a vote fraud conspiracy in an election where there was no contest. The fact that he claims to be innocent should bear

considerable weight, because of the failure of proof, as shown.

The conviction was affirmed by a four to three division in our Supreme Court (*People* v. *Orlando*, 380 Ill. 107).

After this affirmance, an election was held and two Justices were replaced by the opposite political party. As is shown by the record, petitioner lost the vote of at least one Justice by reason of this change in personnel.

The petition for rehearing was decided against petitioner after this change. We do not wish to be understood as implying that the new Justices are any less fair, but the fact does remain that they had not heard the arguments in the case. No point can be made of the situation here, except that we feel that if your Honors be now impressed with the fact that the decision below is by a court divided and changed, further study of the questions submitted might be desired by this court.

We repeat, in a more condensed form, three of the four grounds upon which the jurisdiction of this court is claimed to extend (Our Petition, p. 3):

1. The defendant waived a jury. The State objected and the defendant was forced against his will to submit to a jury trial. It was specifically claimed at the time in the trial court (Abst. 28) that due process of law as guaranteed by the Fourteenth Amendment to the Federal Constitution was violated. Although the point was again urged as a Federal question upon the Illinois Supreme Court (Abst. 197, 198, points 6 and 26), relief was denied. This is a point of first impression insofar as our search discloses.

2. Your petitioner had been previously tried and acquitted for what he claims to be the same offense. The trial court held (R. 12), as a matter of law, that the offenses were not the same, and the Supreme Court of

Illinois sustained this view. The question was presented to the trial court (Abst. 188) as an error depriving your petitioner of Federal rights and again as a Federal question to the Illinois Supreme Court (Abst. 199). The Supreme Court held that the offenses were not the same. This, we contend, is error reviewable here. In reconsidering this point your Honors will remember the change in the composition of our court. Although a court has the power to decide without argument, such a decision should carry little weight here on a close question.

3. The prosecutor was permitted to show over objection that your petitioner had previously stood upon his constitutional right to refuse to answer questions in the office of the State's Attorney. This point was preserved as a Federal question in the trial court (Abst. 188) and in the Illinois Supreme Court (Abst. 199). The trial court lost jurisdiction if the reasoning of this court in cases such as *Powell* v. *Alabama*, 287 U. S. 45.

We pray that a rehearing be granted in order that we may have further opportunity to support our claim here under the law and the facts as shown by the record.

Respectfully submitted,

WM. SCOTT STEWART,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

Wm. Scott Stewart hereby certifies that this petition for rehearing is presented in good faith and not for delay.

WM. SCOTT STEWART,
Counsel for Petitioner.